



Bill 6

Legislative Council Staff *Nonpartisan Services for Colorado's Legislature*

Fiscal Note

Drafting Number: LLS 22-0184
Prime Sponsors:

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Bill Status: Bill Draft
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Bill Topic: **PROCEDURE FOR WATER RIGHTS THAT CONCERN HEADWATERS**

**Summary of
Fiscal Impact:**

- | | |
|---|--|
| <input checked="" type="checkbox"/> State Revenue | <input type="checkbox"/> TABOR Refund |
| <input checked="" type="checkbox"/> State Expenditure | <input type="checkbox"/> Local Government |
| <input type="checkbox"/> State Transfer | <input type="checkbox"/> Statutory Public Entity |

The bill requires the State Engineer to determine which water resources constitute headwaters, and it requires water judges to consider public comments when making water rights rulings that affect headwaters. It will increase state revenue and expenditures on an ongoing basis.

**Appropriation
Summary:** For FY 2022-23, the bill requires an appropriation of \$23,657 to the Department of Natural Resources, which is reappropriated to the Department of Law.

**Fiscal Note
Status:** The fiscal note reflects the draft bill, as requested by the Water Resources Review Committee.

**Table 1
State Fiscal Impacts Under Bill 6**

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue		-	-
Expenditures	General Fund	\$23,657	-
	FTE	0.1 FTE	-
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

The bill creates a definition of “headwaters” and directs the State Engineer, in the Department of Natural Resources, to adopt rules to determine the section of each river or tributary that constitutes its headwaters, notify each water division of these determinations, and post the determinations online, by January 1, 2023. The bill specifies the means by which the State Engineer may update the determinations.

The water clerk of each water division must include in the court resume an invitation to be included in the headwaters notification list, beginning in January 2023 and in each subsequent January. Anyone who elects to receive notifications may be subject to a fee.

Starting March 1, 2023, for any water rights application that concerns headwaters, the water clerk must notify members of the headwaters notification list, post notice of the application on the water court’s website, and provide a mechanism for submitting public comment on the application. The referee or water judge must consider any public comments provided when making a ruling on the application, to the extent practicable.

State Revenue

Revenue may increase in the Judicial Department if water divisions charge a fee to be added to a headwaters notification list. Because the amount of the fee and the number of individuals who pay the fee are unknown, the fiscal note does not include an estimate of fee revenue. However, as the bill restricts the fee to \$12 per person, any revenue generated is expected to be minimal.

State Expenditures

The bill increases state expenditures in the Department of Natural Resources by \$23,657 in FY 2022-23 from the General Fund, and it increases workload in the Judicial Department on an ongoing basis. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under Bill 6

	FY 2022-23	FY 2023-24
Department of Natural Resources		
Legal Services	\$23,657	-
FTE – Legal Services	0.1 FTE	FTE
Total Cost	\$23,657	\$0
Total FTE	0.1 FTE	FTE

Department of Natural Resources. Workload will increase in FY 2022-23 in the Division of Water Resources to adopt rules to make determinations about headwaters and disseminate those determinations. Rulemaking will require 240 hours of legal services in FY 2022-23 only, provided by the Department of Law. Workload will increase in subsequent years to the extent that the State Engineer updates any headwaters determination.

Judicial Department. Workload will increase in water courts for water clerks to manage the headwaters notification list, make notifications as required, and to collect public comment. The extent of this workload will depend on how many water rights applications concern headwaters and the extent to which public comments are submitted. The fiscal note assumes that the mechanism on the water court's website for gathering public comment will not require programming. Significant modifications to the website will require additional funding. Workload may also increase for referees or water judges to consider public comments when making rulings on water rights applications. These workload increases are expected to be accomplished within existing appropriations. If additional funding is required, it will be requested through the annual budget process.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2022-23, the bill requires an appropriation of \$23,657 to the Department of Natural Resources and 0.1 FTE, which are reappropriated to the Department of Law.

State and Local Government Contacts

Judicial Law Natural Resources